

## Securities and Exchange Commission

## § 204.4

agreement for repayment, and to a review of the claim (if requested). Like salary offset, agencies may cooperate with one another in order to effectuate recovery of the claim.

(b) The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Securities and Exchange Commission (Commission). These regulations are consistent with the Debt Collection Act and the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the Department of the Treasury (31 CFR 901.3).

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54130, Oct. 26, 2001]

### § 204.2 Definitions.

(a) *Administrative offset* as defined in 31 U.S.C. 3701(a)(1) means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54130, Oct. 26, 2001]

### § 204.3 General.

(a) The Chairperson (or designee) may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(b) The Chairperson (or designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds

held; the Commission will provide certification that:

(1) The debt is past due and legally enforceable; and

(2) The person has been afforded the necessary due process rights.

(c) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt. This limitation does not apply to debts reduced to judgment.

(d) Administrative offset under this subpart may not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

(e) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or Federal tax refunds under 31 U.S.C. 3720A and 31 CFR 285.2.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54130, Oct. 26, 2001]

### § 204.4 Demand for payment—notice.

(a) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The type and amount of the debt;

(2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) The right of the debtor to inspect and copy the Commission's records related to the claim;

## § 204.5

## 17 CFR Ch. II (4–1–11 Edition)

(5) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described in §204.7, to request an oral hearing from the Commission's designee; and

(6) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way.

(b) Claims for payment of travel advances and employee training expenses require notification prior to administrative offset as described in this section. Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54130, Oct. 26, 2001]

### § 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in §204.4(a) by the proposed effective date specified in the notice, the Commission may take further action under this section or under the Federal Claims Collection Standards (31 CFR 901.3). The commission may collect by administrative offset if the debtor:

(a) Has not made payment by the payment due date;

(b) Has not requested a review of the claim within the agency as set out in §204.6; or

(c) Has not made an arrangement for payment by the payment due date.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54130, Oct. 26, 2001]

### § 204.6 Agency review.

(a) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may request a hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in §204.4(c).

(b) The Commission will provide a copy of the record to the debtor and advise him/her to furnish available evidence to support his or her position. Upon receipt of the evidence, the written record of indebtedness will be reviewed and the debtor will be informed of the results of that review.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's accounts maintained by the Commission may be temporarily suspended. Depending on the type of transaction, the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs will continue to accrue.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

### § 204.7 Hearing.

(a) A debtor will be provided a reasonable opportunity for an oral hearing by the Commission's designee when:

(1) (i) By statute, consideration must be given to a request to waive the indebtedness;

(ii) The debtor requests waiver of the indebtedness; and

(iii) The waiver determination rests on an issue of credibility or veracity; or

(2) The debtor requests reconsideration and the Commission's designee determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

(b) In cases where an oral hearing is provided to the debtor, the Commission's designee will conduct the hearing, and provide the debtor with a written decision 30 days after the hearing.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

### § 204.8 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Commission has discretion to determine whether to accept a repayment agreement in place of offset. If the debt is